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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

DOE, Individually And On Behalf Of All Others
Similarly Situated,

Plaintiff,

VS.

NETWORK SOLUTIONS, LLC
Defendant.

) Case No. 07-5115 JSW
)
)
) [PROPOSED] ORDER GRANTING
) PLAINTIFF'S MOTION TO STRIKE
) DEFENDANT'S RULE 12 MOTIONS
)
) JUDGE: Hon. Jeffery S. White
) DATE: Jan. 25, 2008
) TIME: 9:00 am
) CTRM: 2

Plaintiff moves to strike the following pleadings under Rule 12(g) of the Federal Rules of Civil Procedure, Local Rule 7-2, and this Court's standing order: (1) "Motion to Dismiss for Failure to State a Claim Pursuant to Federal Rule of Civil Procedure 12(b)(6) (Dkt.# 12), in its entirety (pages 1-15), or at a minimum pages 5-15; (2) "Motion to Strike Pursuant to Federal Rule of Civil Procedure 12(f)" (Dkt.# 14), in its entirety (pages 1-10); and (3) "Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(3), Or In The Alternative To Transfer Pursuant to 28 U.S.C. § 1406(a), For Improper Venue" (Dkt.# 16), in its entirety (pages 1-15). Defendant opposes the motion. For GOOD CAUSE SHOWN, the court GRANTS the motion.

Defendant filed four separate pre-answer motions under Rule 12, totaling fifty-one pages in length. "Rule 12(g) requires that a party who raises a defense by motion prior to an answer raise all such possible defenses in a single motion; omitted defenses cannot be raised in a second, pre-answer motion." *Chilicky v. Schweiker*, 796 F.2d 1131, 1136 (9th Cir. 1986), *rev'd on other grounds*, 487 U.S. 412 (1988); *citing* Fed. R. Civ. Pro. 12(g).¹ The rule "contemplates the presentation of an omnibus pre-answer motion in which defendant advances every available Rule 12 defense and objection he may have that is assertable by motion." *English v. Dyke* 23 F.3d 1086, 1090 (6th Cir. 1994). Indeed, "Rule 12(g) expressly provides that those defenses not raised in the consolidated Rule 12 motion are forever waived." *CGHH, LLC v. Cesta Punta Deportes, S.A. de C.V.*, 2006 U.S. Dist. LEXIS 15015 (N.D. Ga.). Applying this rule, the Ninth Circuit has held, for example, that a defense of improper venue is "waived ...if a defendant moves to dismiss on one or more of the other grounds specified by Rule 12 while failing to raise venue in the same motion." *King v. Russell*, 963 F.2d 1301 (9th Cir 1992).

Beyond the Rule 12(g) requirement that all pre-answer defenses be brought in a single, consolidated motion, this District has further imposed rules to control its own process. The Local Rules impose a 25-page limit on motions, and require the filing of one document that contains the

¹ Rule 12(g) provides that "[a] party who makes a motion under this rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted." Fed. R. Civ. P. 12(g).

1 notice of motion, statement of relief, and memorandum of points and authorities. *See* N.D. Cal. Civ.
2 Loc. R. 7-2(b). This Court has imposed a fifteen (15) page limit on any memorandum of points and
3 authorities. *See* Civil Standing Order of Hon. Jeffrey S. White. Section 1 of this Court's Standing
4 Order provides that "any failure to comply with any of the rules and orders may be deemed
5 sufficient grounds for monetary sanctions, dismissal, entry of default judgment, or other appropriate
6 sanctions." *Id.* One of these "appropriate sanctions" is striking from the records improper
7 pleadings. *See, e.g., Merrifield v. Lockyer*, 388 F. Supp. 2d. 1051, 1056 (N.D. Cal. 2005) (40-page
8 brief ordered stricken for exceeding 25-page limit).

9 The purpose of a motion to strike pursuant to Rule 12(f) is to allow the courts to effectuate
10 judicial economy. *See* Fed. R. Civ. P 12; *See Cazares v. Pac. Shore Funding*, 2006 U.S. Dist.
11 LEXIS 1081, at *7 (C.D. Cal. Jan. 3, 2006). Whether to grant a Rule 12(f) motion to strike is within
12 the discretion of the court. *See Federal Sav. & Loan Ins. Corp. v. Gemini Mgmt.*, 921 F.2d 241, 244
13 (9th Cir. 1990).

14 Accordingly, Defendant's second, third and fourth rule 12 motions (Dkt.# 12, 14 and 16) are
15 stricken.

16 **[Alternatively]** Accordingly, pages 5-15 of the second rule 12 motion (Dkt.# 12) are
17 stricken, and the third and fourth rule 12 motions (Dkt.# 14 and 16) are stricken in their entirety.

18 IT IS SO ORDERED

19 Dated:

20 _____
21 Jeffrey S. White
22 United States District Judge
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